



## August 2009

The Court ADR News section this month covers a New Jersey Supreme Court ruling in which the court held that parents may use arbitration to decide child custody disputes. The section also reviews three new pieces of legislation in New Hampshire that significantly expand the state's court ADR services.

An evaluation of civil mediation in the courts of Victoria, Australia, is highlighted in the New Research section. The evaluation found that the mediation program was meeting its overall goals, but that improvements could be made in mediator training, monitoring and other areas. Finally, the On CourtADR.org section features RSI's *Accessing Justice through Mediation* study, a valuable resource for those interested in improving mediation services for poor and low-income populations.

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## Court ADR News

### New Jersey Supreme Court Rules Parents May Arbitrate Child Custody Disputes

The New Jersey Supreme Court ruled that parents have the right to arbitrate child custody disputes. In *Fawzy v. Fawzy*, the appellate court had overturned an arbitration award involving custody and parenting time on the basis that custody issues cannot be submitted to binding arbitration. The Supreme Court affirmed the appellate court decision, but on other grounds. The court held that parents have the right to "choose the forum in which to resolve their disputes, including arbitration," but that the award should still be overturned because the agreement to arbitrate did not meet certain requirements. In order for the agreement to be binding, the court ruled, it must be in writing and must establish that the parties waive their right to judicial determination. In this case, neither of those conditions was met. The court also set certain requirements for arbitration hearings involving child custody issues in order to safeguard the interests of the

child. For example, to ensure that there is a record on which to evaluate claims that an award threatens harm to a child, all arbitration proceedings must be recorded and all documentary evidence must be kept on record.

Click [here](#) to read the court's full opinion.



## New Hampshire Laws Expand Court ADR Services

Three New Hampshire laws passed in June and July expand existing court ADR programs and add new ones:

**HB281** increases the jurisdictional amount of small claims cases to \$7,500, and mandates mediation for all small claims cases between \$5,000 and \$7,500. Mediation is voluntary for cases below \$5,000. To fund the program, the act adds a filing fee of \$5 for small claims cases below \$5,000, and \$60 for cases between \$5,000 and \$7,500.

**SB106** establishes a mediation program for civil writs at the district court level. In the New Hampshire court system, civil writs are civil cases valued between \$7,500 and \$25,000. Mediation will be voluntary, and the program will be funded by a new \$10 filing fee for civil writs.

**SB70** authorizes the Judicial Branch's Office of Mediation and Arbitration to create pre-suit alternative dispute resolution services. In an interview with *Court ADR Connection*, Karen Borgstrom, the director of the Office of Mediation and Arbitration, said the act will allow the office to create programs where they are needed. For example, she said, the office is working on creating pre-suit mediation programs for the state's business court and for foreclosure cases.

For more information about court ADR services in New Hampshire, visit the Office of Mediation and Arbitration [web site](#).

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## New Research

### Mediation in the Supreme and County Courts of Victoria, Australia

An evaluation of civil mediation in the Supreme and County Courts of Victoria, Australia, looked at whether mediation resolved the disputes, was accessible to disputants, was considered to be fair, was efficient, and achieved effective and acceptable outcomes. The study by Professor Tania Sourdin, which examined 558 case files and 98 post-mediation questionnaires from February to April 2008, found that these objectives were achieved for the most part, but that there was room for improvement.

Some of Professor Sourdin's more interesting findings were: the more money that was spent on a dispute, the less likely the disputants were to believe mediation to be fair; defendants were more likely than plaintiffs to feel that they could participate in the process and had control (although the sample sizes were very small); only 29% of those who reached agreement thought the outcome was fair to both parties; and many of the "mediations" were more akin to conciliations or evaluations than to industry-standard mediation. Among Professor Sourdin's recommendations were better training of the mediators and better delineation of the court's standard for mediation, along with assistance to pro se litigants, earlier referral, and more systematic monitoring of the program.

Click [here](#) to read the full study.

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## On CourtADR.org

### Tip of the Month: Accessing Justice through Mediation

RST's *Accessing Justice Through Mediation: Pathways for Poor and Low-Income Disputants* is a study of mediation services available to poor and low-income disputants in Illinois, and how those services can be improved. Published in 2007, the study identifies the types of cases best suited to mediation and suggests ways that mediation services can be expanded in the state to support litigants who might not be able to afford litigation. It suggests a Stepping Stones Model that would integrate legal services and mediation in order to better meet the needs of poor and low-income people. Although the study is focused on Illinois, its findings could be of interest to court systems anywhere. To read the full study, click [here](#).

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